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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

19 EQUAL EMPLOYMENT
20 OPPORTUNITY COMMISSION,

21 Plaintiff,

22 v.

23 SAI INVESTMENTS, LLC. d/b/a
24 "MINER'S GEMS,"

25 Defendant.

Case No.

COMPLAINT

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Case 5:19-cv-00005-SLG Document 1 Filed 09/16/19

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

909 FIRST AVE., SUITE 400

SEATTLE, WASHINGTON 98104

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**COMPLAINT
AND JURY DEMAND**

(Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 *et seq.*)

NATURE OF ACTION

This is an action under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.* ("ADEA"), to correct unlawful employment practices on the basis of age, and to provide appropriate relief to Lori Burke, who was adversely affected by such practices and to prevent further occurrence of such practices. The Equal Employment Opportunity Commission ("EEOC" or "the Commission") alleges that defendant SAI Investments, LLC d/b/a "Miner's Gems" ("SAI" or "Defendant") violated the ADEA by discriminating against Ms. Burke because of her age (57) when it did not hire her for a Sales Associate position on or about May 1, 2018. Plaintiff seeks monetary relief, including backpay and liquidated damages, and injunctive relief on behalf of Ms. Burke.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 7(b) of the ADEA, 29 U.S.C. § 626(b), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. §§ 216(c), and 217.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Alaska.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA, and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Sta. 2705.

4. At all relevant times, Defendant has continuously been doing business in the State of Alaska and has continuously had at least twenty employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

ADMINISTRATIVE PROCEDURES

6. More than thirty days prior to the institution of this lawsuit, Lori Burke filed a charge of discrimination with the EEOC alleging violations of Title VII and the ADEA by Defendant.

7. On May 28, 2019, the Commission issued to Defendant a Letter of Determination finding reasonable cause to believe that Title VII and the ADEA were violated and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

1 8. The Commission engaged in communications with Defendant to provide
2 Defendant the opportunity to remedy the discriminatory practices described in the Letter
3 of Determination.

4 9. The Commission was unable to secure from Defendant a conciliation
5 agreement acceptable to the Commission.
6

7 10. On June 25, 2019, the Commission issued to Defendant a Notice of Failure
8 of Conciliation.

9 11. All conditions precedent to the institution of this lawsuit have been
10 fulfilled.
11

12 STATEMENT OF CLAIMS

13 12. Since at least March 24, 2018, as described in greater particularity below,
14 Defendant has engaged in unlawful employment practices in violation of the ADEA, 29
15 U.S.C. § 623(a)(1), by discriminating against Ms. Burke based on her age when it
16 interviewed her for a Sales Associate position, but then chose not to hire her.
17

18 a. As of January 1, 2018, Ms. Burke was qualified for SAI's Sales
19 Associate position because she had over ten years of real estate sales
20 experience as a licensed real estate agent in Ohio, Florida and
21 California.
22

23 b. As of January 1, 2018, Ms. Burke was qualified for SAI's Sales
24 Associate position because she had experience selling high end
25 jewelry in California and working with a craftsperson who made
custom jewelry.

1 c. As of January 1, 2018, Ms. Burke was qualified for SAI's Sales
2 Associate position because she had over ten years of experience
3 selling high end eyewear in Ohio at a business where she also
4 supervised at least two other sales staff.
5

6 13. Despite her qualifications, a recruiter who worked for SAI told Ms. Burke
7 during a March 24, 2018 interview that Defendant typically hired sales staff in their
8 twenties for their positions, asked if she had younger friends who might be interested in
9 working for SAI, and then photographed her face, and then her face and body for
10 unspecified reasons.
11

12 14. Despite her qualifications, a second recruiter who worked for SAI told Ms.
13 Burke during a March 28, 2018 interview that Defendant required its employees to work
14 twelve hours each day, six days of each week and typically hired staff in their twenties
15 for their positions and that younger people had more energy.
16

17 15. Despite Ms. Burke's prior sales experience, Defendant chose not to hire her
18 for a Sales Associate position in April or May 2018.
19

20 16. Defendant hired at least twenty applicants who were less than forty years of
21 age for Sales Associate positions in April or May 2018 and who each had less sales
22 experience than Ms. Burke.
23

24 17. The effect of the practices complained of in paragraphs 12 through 16
25 above has been to deprive Ms. Burke of equal employment opportunities.

18. The unlawful employment practices complained of in paragraphs 12
through 16 above were intentional.

19. The unlawful employment practices complained of in paragraphs 12 through 16 above were willful.

PRAAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant and its officers, agents, successors, assigns, and all persons in active concert or participation with them, from refusing to hire any individual because the individual is forty years of age or older, and from committing any other employment practice which discriminates on the basis of age against any individual forty years of age or older.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals forty years of age or older, and which eradicate the effects of past and present unlawful employment practices.

C. Order Defendant to make whole Ms. Burke by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices described above.

D. Order Defendant to pay Ms. Burke liquidated damages for its willful conduct described above, in amounts to be determined at trial.

E. Grant such further relief as the Court deems necessary and proper in the public interest.

F. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by this Complaint.

DATED this 16th day of September, 2019.

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COMPLAINT

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